

(iii) He or she is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law; and

(2) Include the attorney's bar number, if any, from each bar of the highest court of the state, possession, territory, or commonwealth in which he or she is admitted to practice law.

(e) *Changes in addresses or status.* Organizations and attorneys referred to in this subpart are under a continuing obligation to notify the Chief Immigration Judge, in writing, within ten business days, of any change of address, telephone number, or qualifying or professional status. Failure to notify the Chief Immigration Judge of any such change may result in the name of the organization or attorney being removed from the list.

§ 1003.64 Approval and denial of applications.

The Court Administrator of the Immigration Court having jurisdiction over each locality where an organization or attorney provides free legal services shall forward a recommendation for approval or denial of each application submitted by the organization or attorney, and the reasons therefor, to the Chief Immigration Judge. The Chief Immigration Judge shall have the authority to approve or deny an application submitted by an organization or an attorney pursuant to § 1003.63. If an application is denied, the organization or attorney shall be notified of the decision in writing, at the organization's or attorney's last known address, and shall be given a written explanation of the grounds for such denial. A denial must be based on the failure of the organization or attorney to meet the qualifications and/or to comply with the procedures set forth in this subpart. The organization or attorney shall be advised of its, his or her right to appeal this decision to the Board of Immigration Appeals in accordance with § 1003.1(b) and § 1103.3(a)(1)(ii) of this chapter.

§ 1003.65 Removal of an organization or attorney from list.

(a) *Involuntary removal.* If the Chief Immigration Judge believes that an or-

ganization or attorney included on the list of free legal services providers no longer meets the qualifications set forth in this subpart, he or she shall promptly notify the organization or attorney in writing, at the organization's or attorney's last known address, of his or her intention to remove the name of the organization or attorney from the list. The organization or attorney may submit an answer within 30 days from the date the notice is served. The organization or attorney must establish by clear, unequivocal, and convincing evidence that the organization's or attorney's name should not be removed from the list. If, after consideration of any answer submitted by the organization or attorney, the Chief Immigration Judge determines that the organization or attorney no longer meets the qualifications set forth in this subpart, the Chief Immigration Judge shall promptly remove the name of the organization or attorney from the list of free legal service providers, the removal of which will be reflected in the next quarterly update, and shall notify the organization or attorney of such removal in writing, at the organization's or attorney's last known address. Organizations and attorneys shall be advised of their right to appeal this decision to the Board of Immigration Appeals in accordance with § 1003.1(b) and § 1103.3(a)(1)(ii) of this chapter.

(b) *Voluntary removal.* Any organization or attorney qualified under this subpart may, at any time, submit a written request to have its, his or her name removed from the list of free legal service providers. Such a request shall be honored, and the name of the organization or attorney shall promptly be removed from the list, the removal of which will be reflected in the next quarterly update.

Subpart F [Reserved]

Subpart G—Professional Conduct for Practitioners—Rules and Procedures

SOURCE: 65 FR 39526, June 27, 2000, unless otherwise noted.

§ 1003.101 General provisions.

(a) *Authority to sanction.* An adjudicating official or the Board of Immigration Appeals (the Board) may impose disciplinary sanctions against any practitioner if it finds it to be in the public interest to do so. It will be in the public interest to impose disciplinary sanctions against a practitioner who is authorized to practice before the Board and the Immigration Courts when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in § 1003.102. In accordance with the disciplinary proceedings set forth in this subpart and outlined below, an adjudicating official or the Board may impose any of the following disciplinary sanctions:

(1) Expulsion, which is permanent, from practice before the Board and the Immigration Courts or the Immigration and Naturalization Service (the Service), or before all three authorities;

(2) Suspension, including immediate suspension, from practice before the Board and the Immigration Courts or the Service, or before all three authorities;

(3) Public or private censure; or

(4) Such other disciplinary sanctions as the adjudicating official or the Board deems appropriate.

(b) *Persons subject to sanctions.* Persons subject to sanctions include any practitioner. A practitioner is any attorney as defined in § 1001.1(f) of this chapter who does not represent the federal government, or any representative as defined in § 1001.1(j) of this chapter. Attorneys employed by the Department of Justice shall be subject to discipline pursuant to § 1003.109. Nothing in this regulation shall be construed as authorizing persons who do not meet the definition of practitioner to represent individuals before the Board and the Immigration Courts or the Service.

§ 1003.102 Grounds.

It is deemed to be in the public interest for an adjudicating official or the Board to impose disciplinary sanctions against any practitioner who falls within one or more of the categories enumerated in this section, but these categories do not constitute the exclu-

sive grounds for which disciplinary sanctions may be imposed in the public interest. Nothing in this regulation should be read to denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law. A practitioner who falls within one of the following categories shall be subject to disciplinary sanctions in the public interest if he or she:

(a) Charges or receives, either directly or indirectly:

(1) In the case of an attorney, any fee or compensation for specific services rendered for any person that shall be deemed to be grossly excessive. The factors to be considered in determining whether a fee or compensation is grossly excessive include the following: The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; and the experience, reputation, and ability of the attorney or attorneys performing the services,

(2) In the case of an accredited representative as defined in § 1292.1(a)(4) of this chapter, any fee or compensation for specific services rendered for any person, except that an accredited representative may be regularly compensated by the organization of which he or she is an accredited representative, or

(3) In the case of a law student or law graduate as defined in § 1292.1(a)(2) of this chapter, any fee or compensation for specific services rendered for any person, except that a law student or law graduate may be regularly compensated by the organization or firm with which he or she is associated as long as he or she is appearing without direct or indirect remuneration from the client he or she represents;

(b) Bribes, attempts to bribe, coerces, or attempts to coerce, by any means

whatsoever, any person (including a party to a case or an officer or employee of the Department of Justice) to commit any act or to refrain from performing any act in connection with any case;

(c) Knowingly or with reckless disregard makes a false statement of material fact or law, or willfully misleads, misinforms, threatens, or deceives any person (including a party to a case or an officer or employee of the Department of Justice), concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence. If a practitioner has offered material evidence and comes to know of its falsity, the practitioner shall take appropriate remedial measures;

(d) Solicits professional employment, through in-person or live telephone contact or through the use of runners, from a prospective client with whom the practitioner has no family or prior professional relationship, when a significant motive for the practitioner's doing so is the practitioner's pecuniary gain. If the practitioner has no family or prior professional relationship with the prospective client known to be in need of legal services in a particular matter, the practitioner must include the words "Advertising Material" on the outside of the envelope of any written communication and at the beginning and ending of any recorded communication. Such advertising material or similar solicitation documents may not be distributed by any person in or around the premises of any building in which an Immigration Court is located;

(e) Is subject to a final order of disbarment or suspension, or has resigned with an admission of misconduct.

(1) In the jurisdiction of any state, possession, territory, commonwealth, or the District of Columbia, or in any Federal court in which the practitioner is admitted to practice, or

(2) Before any executive department, board, commission, or other governmental unit;

(f) Knowingly or with reckless disregard makes a false or misleading communication about his or her qualifications or services. A communication is false or misleading if it:

(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading, or,

(2) Contains an assertion about the practitioner or his or her qualifications or services that cannot be substantiated. A practitioner shall not state or imply that he or she has been recognized or certified as a specialist in immigration and/or nationality law unless such certification is granted by the appropriate state regulatory authority or by an organization that has been approved by the appropriate state regulatory authority to grant such certification;

(g) Engages in contemptuous or otherwise obnoxious conduct, with regard to a case in which he or she acts in a representative capacity, which would constitute contempt of court in a judicial proceeding;

(h) Has been found guilty of, or pleaded guilty or *nolo contendere* to, a serious crime, in any court of the United States, or of any state, possession, territory, commonwealth, or the District of Columbia. A serious crime includes any felony and also includes any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, dishonesty, bribery, extortion, misappropriation, theft, or an attempt, or a conspiracy or solicitation of another, to commit a serious crime. A plea or verdict of guilty or a conviction after a plea of *nolo contendere* is deemed to be a conviction within the meaning of this section;

(i) Knowingly or with reckless disregard falsely certifies a copy of a document as being a true and complete copy of an original;

(j) Engages in frivolous behavior in a proceeding before an Immigration Court, the Board, or any other administrative appellate body under title II of the Immigration and Nationality Act, provided:

(1) A practitioner engages in frivolous behavior when he or she knows or

reasonably should have known that his or her actions lack an arguable basis in law or in fact, or are taken for an improper purpose, such as to harass or to cause unnecessary delay. Actions that, if taken improperly, may be subject to disciplinary sanctions include, but are not limited to, the making of an argument on any factual or legal question, the submission of an application for discretionary relief, the filing of a motion, or the filing of an appeal. The signature of a practitioner on any filing, application, motion, appeal, brief, or other document constitutes certification by the signer that the signer has read the filing, application, motion, appeal, brief, or other document and that, to the best of the signer's knowledge, information, and belief, formed after inquiry reasonable under the circumstances, the document is well-grounded in fact and is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, and is not interposed for any improper purpose.

(2) The imposition of disciplinary sanctions for frivolous behavior under this section in no way limits the authority of the Board to dismiss an appeal summarily pursuant to § 1003.1(d)(1-a);

(k) Engages in conduct that constitutes ineffective assistance of counsel, as previously determined in a finding by the Board or an Immigration Judge in an immigration proceeding, and a disciplinary complaint is filed within one year of the finding;

(l) Repeatedly fails to appear for scheduled hearings in a timely manner without good cause; or

(m) Assists any person, other than a practitioner as defined in § 1003.101(b), in the performance of activity that constitutes the unauthorized practice of law.

§ 1003.103 Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify EOIR of conviction or discipline.

(a) *Immediate suspension*—(1) *Petition.* The Office of the General Counsel of EOIR shall file a petition with the Board to suspend immediately from practice before the Board and the Im-

migration Courts any practitioner who has been found guilty of, or pleaded guilty or *nolo contendere* to, a serious crime, as defined in § 1003.102(h), or any practitioner who has been disbarred or suspended on an interim or final basis by, or has resigned with an admission of misconduct from, the highest court of any state, possession, territory, commonwealth, or the District of Columbia, or any Federal court. A copy of the petition shall be forwarded to the Office of the General Counsel of the Service, which may submit a written request to the Board that entry of any order immediately suspending a practitioner before the Board or the Immigration Courts also apply to the practitioner's authority to practice before the Service. Proof of service on the practitioner of the Service's request to broaden the scope of any immediate suspension must be filed with the Board.

(2) *Immediate suspension.* Upon the filing of a petition for immediate suspension by the Office of the General Counsel of EOIR, together with a certified copy of a court record finding that a practitioner has been so found guilty of a serious crime, or has been so disciplined or has so resigned, the Board shall forthwith enter an order immediately suspending the practitioner from practice before the Board, the Immigration Courts, and/or the Service, notwithstanding the pendency of an appeal, if any, of the underlying conviction or discipline, pending final disposition of a summary disciplinary proceeding as provided in paragraph (b) of this section. Such immediate suspension will continue until imposition of a final administrative decision. Upon good cause shown, the Board may set aside such order of immediate suspension when it appears in the interest of justice to do so. If a final administrative decision includes the imposition of a period of suspension, time spent by the practitioner under immediate suspension pursuant to this paragraph may be credited toward the period of suspension imposed under the final administrative decision.

(b) *Summary disciplinary proceedings.* The Office of the General Counsel of EOIR shall promptly initiate summary disciplinary proceedings against any

practitioner described in paragraph (a) of this section. Summary proceedings shall be initiated by the issuance of a Notice of Intent to Discipline, accompanied by a certified copy of the order, judgment, and/or record evidencing the underlying criminal conviction, discipline, or resignation. Summary proceedings shall be conducted in accordance with the provisions set forth in §§ 1003.105 and 1003.106. Any such summary proceeding shall not be concluded until all direct appeals from an underlying criminal conviction shall have been completed.

(1) In matters concerning criminal convictions, a certified copy of the court record, docket entry, or plea shall be conclusive evidence of the commission of the crime in any summary disciplinary proceeding based thereon.

(2) In the case of a summary proceeding based upon a final order of disbarment or suspension, or a resignation with an admission of misconduct, (*i.e.*, reciprocal discipline), a certified copy of a judgment or order of discipline shall establish a rebuttable presumption of the professional misconduct. Disciplinary sanctions shall follow in such a proceeding unless the attorney can rebut the presumption by demonstrating by clear, unequivocal, and convincing evidence that:

(i) The underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) There was such an infirmity of proof establishing the attorney's professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject; or

(iii) The imposition of discipline by the adjudicating official would result in grave injustice.

(c) *Duty of practitioner to notify EOIR of conviction or discipline.* Any practitioner who has been found guilty of, or pleaded guilty or *nolo contendere* to, a serious crime, as defined in § 1003.102(h), or who has been disbarred or suspended by, or who has resigned with an admission of misconduct from, the highest court of any state, possession, territory, commonwealth, or the District of

Columbia, or by any Federal court, must notify the Office of the General Counsel of EOIR of any such conviction or disciplinary action within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending. Failure to do so may result in immediate suspension as set forth in paragraph (a) of this section and other final discipline. This duty to notify applies only to convictions for serious crimes and to orders imposing discipline for professional misconduct entered on or after August 28, 2000.

§ 1003.104 Filing of complaints; preliminary inquiries; resolutions; referral of complaints.

(a) *Filing of complaints*—(1) *Practitioners authorized to practice before the Board and the Immigration Courts.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner who is authorized to practice before the Board and the Immigration Courts, shall be filed with the Office of the General Counsel of EOIR. Disciplinary complaints must be submitted in writing and must state in detail the information that supports the basis for the complaint, including, but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individuals involved, the harm or damages sustained by the complainant, and any other relevant information. Any individual may file a complaint with the Office of the General Counsel of EOIR using the Form EOIR-44. The Office of the General Counsel of EOIR shall notify the Office of the General Counsel of the Service of any disciplinary complaint that pertains, in whole or in part, to a matter involving the Service.

(2) *Practitioners authorized to practice before the Service.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner who is authorized to practice before the Service, shall be filed with the Office of the General Counsel of the Service pursuant to the procedures set forth in § 292.3(d) of this chapter.

(b) *Preliminary inquiry.* Upon receipt of a disciplinary complaint or on its

own initiative, the Office of the General Counsel of EOIR will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other applicable privilege, to the extent necessary to conduct a preliminary inquiry and any subsequent proceedings based thereon. If the Office of the General Counsel of EOIR determines that a complaint is without merit, no further action will be taken. The Office of the General Counsel of EOIR may, in its discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner shall be notified of any such determination in writing.

(c) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* The Office of the General Counsel of EOIR, in its discretion, may issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(d) *Referral of complaints of criminal conduct.* If the Office of the General Counsel of EOIR receives credible information or allegations that a practitioner has engaged in criminal conduct, the Office of the General Counsel of EOIR shall refer the matter to the Inspector General and, if appropriate, to the Federal Bureau of Investigation. In such cases, in making the decision to pursue disciplinary sanctions, the Office of the General Counsel of EOIR shall coordinate in advance with the appropriate investigative and prosecutorial authorities within the Department to ensure that neither the disciplinary process nor criminal prosecutions are jeopardized.

§ 1003.105 Notice of Intent to Discipline.

(a) *Issuance of Notice to practitioner.* If, upon completion of the preliminary inquiry, the Office of the General Counsel of EOIR determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in § 1003.102, it will issue a Notice of Intent to Discipline to the practitioner

named in the complaint. This notice will be served upon the practitioner by personal service as defined in § 103.5a of 8 CFR chapter I. Such notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board.

(b) *Copy of Notice to the Service; reciprocity of disciplinary sanctions.* A copy of the Notice of Intent to Discipline shall be forwarded to the Office of the General Counsel of the Service. The Office of the General Counsel of the Service may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner which restricts his or her authority to practice before the Board or the Immigration Courts also apply to the practitioner's authority to practice before the Service. Proof of service on the practitioner of any request to broaden the scope of the proposed discipline must be filed with the adjudicating official.

(c) *Answer—(1) Filing.* The practitioner shall file a written answer to the Notice of Intent to Discipline with the Board within 30 days of the date of service of the Notice of Intent to Discipline unless, on motion to the Board, an extension of time to answer is granted for good cause. A motion for an extension of time to answer must be received by the Board no later than three (3) working days before the time to answer has expired. A copy of the answer and any such motion shall be served by the practitioner on the Office of the General Counsel of EOIR (or the Office of the General Counsel of the Service with respect to a Notice of Intent to Discipline issued by the Service).

(2) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the Notice of Intent to Discipline. Every allegation in the Notice of Intent to Discipline which is not denied in the answer shall be deemed to be admitted and may be considered as

proved, and no further evidence in respect of such allegation need be adduced. The practitioner may also state affirmatively special matters of defense and may submit supporting documents, including affidavits or statements, along with the answer.

(3) *Request for hearing.* The practitioner shall also state in the answer whether he or she requests a hearing on the matter. If no such request is made, the opportunity for a hearing will be deemed waived.

(d) *Failure to file an answer.* (1) Failure to file an answer within the time period prescribed in the Notice of Intent to Discipline, except where the time to answer is extended by the Board, shall constitute an admission of the allegations in the Notice of Intent to Discipline and no further evidence with respect to such allegations need be adduced.

(2) Upon such a default by the practitioner, the Office of the General Counsel shall submit to the Board proof of personal service of the Notice of Intent to Discipline. The practitioner shall be precluded thereafter from requesting a hearing on the matter. The Board shall issue a final order adopting the recommended disciplinary sanctions in the Notice of Intent to Discipline unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct, or would otherwise be unwarranted or not in the interest of justice. Any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from pending immigration matters and notifying immigration clients of the imposition of any sanction. A practitioner may file a motion to set aside a final order of discipline issued pursuant to this paragraph, with service of such motion on the Office of the General Counsel of EOIR, provided:

(i) Such a motion is filed within 15 days of the date of service of the final order; and

(ii) His or her failure to file an answer was due to exceptional circumstances (such as serious illness of the practitioner or death of an imme-

diate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

§ 1003.106 Hearing and disposition.

(a) *Hearing—(1) Procedure.* (i) The Chief Immigration Judge shall, upon the filing of an answer, appoint an Immigration Judge as an adjudicating official. At the request of the Chief Immigration Judge or in the interest of efficiency, the Director of EOIR may appoint an Administrative Law Judge as an adjudicating official. An Immigration Judge or Administrative Law Judge shall not serve as the adjudicating official in any case in which he or she is also the complainant. An Immigration Judge shall not serve as the adjudicating official in any case involving a practitioner who regularly appears before him or her.

(ii) Upon the practitioner's request for a hearing, the adjudicating official shall designate the time and place of the hearing with due regard to the location of the practitioner's practice or residence, the convenience of witnesses, and any other relevant factors. Such notice shall be served upon the practitioner by personal service as defined in § 103.5a of 8 CFR chapter I. The practitioner shall be afforded adequate time to prepare his or her case in advance of the hearing. Pre-hearing conferences may be scheduled at the discretion of the adjudicating official in order to narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise to simplify and organize the proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline are subject to final approval by the adjudicating official or if the practitioner has not filed an answer, subject to final approval by the Board.

(iii) The practitioner may be represented at the hearing by counsel at no expense to the government. Counsel for the practitioner shall file a Notice of Entry of Appearance on Form EOIR-28 in accordance with the procedures set forth in this Part 3. At the hearing, the practitioner shall have a reasonable opportunity to examine and object

to evidence presented by the government, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the government.

(iv) In rendering a decision, the adjudicating official shall consider the following: the complaint, the preliminary inquiry report, the Notice of Intent to Discipline, the answer and any supporting documents, and any other evidence presented at the hearing (or, if the practitioner files an answer but does not request a hearing, any pleading, brief, or other materials submitted by counsel for the government). Counsel for the government shall bear the burden of proving the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline by clear, unequivocal, and convincing evidence.

(v) The record of the hearing, regardless of whether the hearing is held before an Immigration Judge or an Administrative Law Judge, shall conform to the requirements of 8 CFR part 3, subpart C and 8 CFR 1240.9. Disciplinary hearings shall be conducted in the same manner as Immigration Court proceedings as is appropriate, and shall be open to the public, except that:

(A) Depending upon physical facilities, the adjudicating official may place reasonable limitations upon the number of individuals in attendance at any one time, with priority being given to the press over the general public, and

(B) For the purposes of protecting witnesses, parties, or the public interest, the adjudicating official may limit attendance or hold a closed hearing.

(2) *Failure to appear at the hearing.* If the practitioner fails to appear at the hearing, the adjudicating official shall then proceed and decide the case in the absence of the practitioner, in accordance with paragraph (b) of this section, based upon the available record, including any additional evidence or arguments presented by EOIR or the Service at the hearing. In such a proceeding, the Office of the General Counsel of EOIR or the Office of the General Counsel of the Service shall submit to the adjudicating official proof of personal service of the Notice of Intent to Discipline as well as the Notice of the Hearing. The practitioner shall be precluded thereafter from par-

ticipating further in the proceedings. Any final order imposing discipline entered in absentia shall be a final order, but shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from pending immigration matters and notifying immigration clients of the imposition of any sanction. A final order of discipline issued pursuant to this paragraph shall not be subject to further review, except that the practitioner may file a motion to set aside the order, with service of such motion on the Office of the General Counsel of EOIR (or the Office of the General Counsel of the Service), provided:

(i) Such a motion is filed within 15 days of the date of issuance of the final order; and

(ii) His or her failure to appear at the hearing was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

(b) *Decision.* The adjudicating official shall consider the entire record, including any testimony and evidence presented at the hearing, and, as soon as practicable after the hearing, render a decision. If the adjudicating official finds that one or more of the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline have been established by clear, unequivocal, and convincing evidence, he or she shall rule that the disciplinary sanctions set forth in the Notice of Intent to Discipline be adopted, modified, or otherwise amended. If the adjudicating official determines that the practitioner should be suspended, the time period for such suspension shall be specified. Any grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline that have not been established by clear, unequivocal, and convincing evidence shall be dismissed. Except as provided in paragraph (a)(2) of this section, the adjudicating official's decision becomes final only upon waiver of appeal or expiration of the time for appeal to the

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Board, whichever comes first, nor does it take effect during the pendency of an appeal to the Board as provided in § 1003.6.

(c) *Appeal.* Upon the issuance of a decision by the adjudicating official, either party or both parties may appeal to the Board to conduct a *de novo* review of the record. Parties must comply with all pertinent provisions for appeals to the Board, including provisions relating to forms and fees, as set forth in this Part 3, and must use the Form EOIR-45. The decision of the Board is a final administrative order as provided in § 1003.1(d)(2), and shall be served upon the practitioner by personal service as defined in § 103.5a of 8 CFR chapter I. Any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from any pending immigration matters and notifying immigration clients of the imposition of any sanction. A copy of the final administrative order of the Board shall be served upon the Office of the General Counsel of EOIR and the Office of the General Counsel of the Service. If disciplinary sanctions are imposed against a practitioner (other than a private censure), the Board may require that notice of such sanctions be posted at the Board, the Immigration Courts, or the Service for the period of time during which the sanctions are in effect, or for any other period of time as determined by the Board.

(d) *Referral.* In addition to, or in lieu of, initiating disciplinary proceedings against a practitioner, the Office of the General Counsel of EOIR may notify any appropriate Federal and/or state disciplinary or regulatory authority of any complaint filed against a practitioner. Any final administrative decision imposing sanctions against a practitioner (other than a private censure) shall be reported to any such disciplinary or regulatory authority in every jurisdiction where the disciplined practitioner is admitted or otherwise authorized to practice. In addition, the Office of the General Counsel of EOIR shall transmit notice of all public discipline imposed under this rule to the

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National Lawyer Regulatory Data Bank maintained by the American Bar Association.

§ 1003.107 Reinstatement after expulsion or suspension.

(a) *Expiration of suspension.* Upon notice to the Board, a practitioner who has been suspended will be reinstated to practice before the Board and the Immigration Courts or the Service, or before all three authorities, once the period of suspension has expired, provided that he or she meets the definition of attorney or representative as set forth in § 1001.1(f) and (j), respectively, of this chapter. If a practitioner cannot meet the definition of attorney or representative, the Board shall decline to reinstate the practitioner.

(b) *Petition for reinstatement.* A practitioner who has been expelled or who has been suspended for one year or more may file a petition for reinstatement directly with the Board after one-half of the suspension period has expired or one year has passed, whichever is greater, provided that he or she meets the definition of attorney or representative as set forth in § 1001.1(f) and (j), respectively, of this chapter. A copy of such petition shall be served on the Office of the General Counsel of EOIR. In matters in which the practitioner was ordered expelled or suspended from practice before the Service, a copy of such petition shall be served on the Office of the General Counsel of the Service.

(1) The practitioner shall have the burden of demonstrating by clear, unequivocal, and convincing evidence that he or she possesses the moral and professional qualifications required to appear before the Board and the Immigration Courts or the Service, or before all three authorities, and that his or her reinstatement will not be detrimental to the administration of justice. The Office of the General Counsel of EOIR, and in matters in which the practitioner was ordered expelled or suspended from practice before the Service, the Office of the General Counsel of the Service, may reply within 30 days of service of the petition in the form of a written response to the Board, which may include documentation of any complaints filed against the

expelled or suspended practitioner subsequent to his or her expulsion or suspension.

(2) If a practitioner cannot meet the definition of attorney or representative as set forth in § 1001.1(f) and (j), respectively, of this chapter, the Board shall deny the petition for reinstatement without further consideration. If the petition for reinstatement is found to be otherwise inappropriate or unwarranted, the petition shall be denied. Any subsequent petitions for reinstatement may not be filed before the end of one year from the date of the Board's previous denial of reinstatement. If the petition for reinstatement is determined to be timely, the practitioner meets the definition of attorney or representative, and the petitioner has otherwise set forth by the requisite standard of proof that he or she possesses the qualifications set forth herein, and that reinstatement will not be detrimental to the administration of justice, the Board shall grant the petition and reinstate the practitioner. The Board, in its discretion, may hold a hearing to determine if the practitioner meets all of the requirements for reinstatement.

§ 1003.108 Confidentiality.

(a) *Complaints and preliminary inquiries.* Except as otherwise provided by law or regulation, information concerning complaints or preliminary inquiries is confidential. A practitioner whose conduct is the subject of a complaint or preliminary inquiry, however, may waive confidentiality, except that the Office of the General Counsel of EOIR may decline to permit a waiver of confidentiality if it is determined that an ongoing preliminary inquiry may be substantially prejudiced by public disclosure before the filing of a Notice of Intent to Discipline.

(1) *Disclosure of information for the purpose of protecting the public.* The Office of the General Counsel of EOIR may disclose information concerning a complaint or preliminary inquiry for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality in circumstances including, but not limited to, the following:

(i) A practitioner has caused, or is likely to cause, harm to client(s), the public, or the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. If disclosure of information is made pursuant to this paragraph, the Office of the General Counsel of EOIR may define the scope of information disseminated and may limit the disclosure of information to specified individuals or entities;

(ii) A practitioner has committed criminal acts or is under investigation by law enforcement authorities;

(iii) A practitioner is under investigation by a disciplinary or regulatory authority, or has committed acts or made omissions that may reasonably result in investigation by such authorities;

(iv) A practitioner is the subject of multiple disciplinary complaints and the Office of the General Counsel of EOIR has determined not to pursue all of the complaints. The Office of the General Counsel of EOIR may inform complainants whose allegations have not been pursued of the status of any other preliminary inquiries or the manner in which any other complaint(s) against the practitioner have been resolved.

(2) *Disclosure of information for the purpose of conducting a preliminary inquiry.* The Office of the General Counsel of EOIR, in the exercise of discretion, may disclose documents and information concerning complaints and preliminary inquiries to the following individuals or entities:

(i) To witnesses or potential witnesses in conjunction with a complaint or preliminary inquiry;

(ii) To other governmental agencies responsible for the enforcement of civil or criminal laws;

(iii) To agencies and other jurisdictions responsible for disciplinary or regulatory investigations and proceedings;

(iv) To the complainant or a lawful designee;

(v) To the practitioner who is the subject of the complaint or preliminary inquiry or the practitioner's counsel of record.

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(b) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* Resolutions, such as warning letters, admonitions, and agreements in lieu of discipline, reached prior to the issuance of a Notice of Intent to Discipline, will remain confidential. However, such resolutions may become part of the public record if the practitioner becomes subject to a subsequent Notice of Intent to Discipline.

(c) *Notices of Intent to Discipline and action subsequent thereto.* Notices of Intent to Discipline and any action that takes place subsequent to their issuance, except for the imposition of private censures, may be disclosed to the public, except that private censures may become part of the public record if introduced as evidence of a prior record of discipline in any subsequent discipli-

nary proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline may be disclosed to the public upon final approval by the adjudicating official or the Board. Disciplinary hearings are open to the public, except as noted in § 1003.106(a)(1)(v).

§ 1003.109 Discipline of government attorneys.

Complaints regarding the conduct or behavior of Department attorneys, Immigration Judges, or Board Members shall be directed to the Office of Professional Responsibility, United States Department of Justice. If disciplinary action is warranted, it shall be administered pursuant to the Department's attorney discipline procedures.